IN THE HIGH COURT OF BOMBAY AT PANAJI

COMPANY PETITION NO. 4 OF 2005

M/s. Shreeraj Antibiotics
C & F Agents,
A Company Incorporated under
the Companies Act, 1956,
No. 197, 2nd Floor, 5th Main,
6th Cross, Gandhinagar,
Bangalore 560009,
represented by its Proprietor,
Mr. Gautam Chopra. ..... Petitioner

V e r s u s

Goa Antibiotics and Pharmaceutical Ltd.
A Company Incorporated under the
Companys Act, 1956,
having its Registered Office at Tuem,
Pernem, Goa 403512,
represented by its Managing Director,
S. V. Vernekar. ..... Respondents

Mr. R. M. Shinkre, Advocate for the Petitioner.

Ms. C. Collaso, Advocate for the Respondent.

CORAM: N. A. BRITTO, J.

DATE: 15th September, 2006.

ORAL ORDER

Heard Shri Shinkre, the learned counsel on behalf of the petitioner and Ms. Collaso, the learned Counsel on behalf of the respondent-Company.

2. The petitioner has filed the present petition for the winding up of the respondent-Company with the allegation that the respondent has been unable to pay a debt of Rs.6,38,659/- as on 30.09.2004. In the reply filed on behalf of the respondent, it is stated that the respondent was declared as a Sick Company by virtue of the Order dated 05.05.1998 of the Board for Industrial & Financial Reconstruction, New Delhi. A copy of the said Order has been produced. The respondent's contention therefore is that the petition is not maintainable without the consent of the said Board as required under Section 22 of the SIC (SP) Act, 1985. On behalf of the respondents, reliance has been placed on the cases of ***NGEF Ltd. v. Chandra Developers (P) Ltd. & Anr. ((2005) 8 S.C.C. 219)*** and ***Gear Enterprises v. Mafatlal Engineering Industries Ltd (1994 Mh.L.J. 348)***.

3. Section 22 (i) of SICA, inter alia, provides that where in respect

of an industrial company an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.(Emphasis supplied). In the case of ***Asian Bearings and Tools Corporation v. Coastal Chemicals Limited (1996 Company Cases, Vol. 86 Page 590)***, the above underlined expressions, came for interpretation. It was stated that the expression "*shall lie*" obviously referred to the pre-initiation stage and the expression "*be proceeded with*" refers to the post-initiation period, and therefore, if an enquiry under Section 16 was pending

or any scheme referred to under Section 17 or under preparation or consideration or where a sanctioned scheme was under implementation or where an appeal under Section 25 was pending before the B.I.F.R., no application for winding up shall lie in respect of the Industrial Company unless the consent of the BIFR was obtained. It was also observed that in case of pending applications/proceedings, the same ought not to be proceeded with further except with the consent of the B.I.F.R. In the case of ***Gear Enterprises v. Mafatlal Engineering Industries Ltd. (Supra)***, with reference to both the aforesaid expressions, this Court held that the question of obtaining prior consent of the board would arise, firstly for initial filing of the proceedings for winding up as well as further continuation thereof. This Court considered a number of cases cited in arriving at the said conclusion and since the Company was declared Sick prior to the filing of the petition, proceeded to dismiss the petition as not maintainable for want of prior consent of the B.I.F.R.

4. Since the present petition was filed on 10.02.2005, after the respondent-Company was declared Sick by Order dated 05.05.1998, by the B.I.F.R., the petition requires to be dismissed in the light of Section 22 of SICA, with no order as to costs. However, it is made clear that the

petitioner would be free to obtain the consent of the B.I.F.R. and initiate proceedings of winding up, if otherwise permissible in law.

N. A. BRITTO, J.

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